

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1006 of 2014**

1. Hemlata, Aged 44 years, W/o Late Dugeshwar Sahu.
2. Kumari Kumudani, Aged 22 years, D/o Late Dugeshwar Sahu.
3. Kumari Sandhya, Aged 20 years, D/o Late Dugeshwar Sahu.

All above are R/o Village Bagtarai, P.S. and Tahsil Gurur, District Balod, Chhattisgarh.

---Petitioners

Versus

1. Satyabhama, W/o Late Amarnath Sahu.
2. Dharmesh Kumar S/o Late Amarnath Sahu.
3. Bhagwantin Bai, W/o Olaram Sahu.

All above are R/o Bagtarai, P.S. and Tahsil Gurur, District Balod, Chhattisgarh.

--- Respondents

For Petitioners :- Mr. Somnath Verma, Advocate

For Respondents :- None

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

03/12/2020

1. Petitioners herein call in question the legality, validity and correctness of the impugned order dated 28/08/2014 by which learned Additional Session Judge, Balod has allowed the revision

filed by the other side and set aside the order dated 18/11/2010 whereby learned Sub-divisional Magistrate, Balod attached the subject property and gave supurdnama in the proceedings initiated under Section 145(1) of CrPC by the petitioners herein.

2. Mr. Somnath Verma, learned counsel for the petitioners, would submit that the revisional Court is absolutely unjustified in granting the revision holding that the suit property which was subject matter of Civil Suit No. 3-A/1994 (*Amarnath & Ors. v. Hemlata*), in which the present petitioners were party, has already been decreed by the Civil Court in favour of the plaintiffs/respondents herein and in execution of the decree, possession of the suit property ought to have been given to them, whereas the dispute herein relates to the additional portion of the property which was not the subject matter of the decree, as such, the revisional Court has erred in setting aside the order dated 18/11/2010 passed by the Sub-divisional Magistrate.

3. None appeared on behalf of the respondents, though served.

4. I have heard learned counsel for the petitioner and perused the record.

5. It is not in dispute that the plaintiffs/respondents had filed Civil Suit No. 3-A/1994 (*Amarnath & Ors. v. Hemlata*) against the defendants/plaintiffs in which decree for possession and permanent injunction was granted in favour of the plaintiffs/respondents with regard to the suit property bearing Khasra No. 121 area 1.82 RA, Khasra No. 715/1 area 0.98 RA, Khasra No. 625 area 0.70 RA and Khasra No. 119 area 0.01 RA and thereafter, proceedings under Section 145 of CrPC was initiated by the petitioners herein in which the Sub-divisional Magistrate called the police report and immediately thereafter directed for attachment under Section 146(1) of CrPC and surprisingly thereafter passed a preliminary order under Section 145(1) of CrPC.

6. The order dated 18/11/2010 passed by learned Sub-divisional Magistrate states as under :-

18.11.2010 प्रकरण पेश |

आवेदिका अधिवक्ता श्री छगनलाल डडसेना उपस्थित |

थाना प्रभारी गुरुर से जांच प्रतिवेदन प्राप्त | जांच प्रतिवेदन अनुसार उभयपक्षों के मध्य जमीन बटवारा को लेकर विवाद होना तथा वर्तमान में फसल कटाई की बातों को लेकर विवाद होने की स्थिति है जिससे दोनों आपस में झगड़ा विवाद होने की सम्भावना व्यक्त की गयी है |

उपरोक्तानुसार उभयपक्ष के मध्य फसल कटाई के समय लड़ाई झगड़ा विवाद होने का अंदेशा है जिससे ग्राम में शांति भंग हो सकती है ऐसी

स्थिति में प्रश्नाधीन भूमि के कब्जे के सम्बन्ध में उभयपक्ष के मध्य वाद की स्थिति विद्यमान है ।

अतएव ग्राम बागतराई स्थित वादग्रस्त भूमि खसरा नं. 95 का टुकड़ा 0.89 आरे एवं खसरा नं. 183 का रकबा 1.41 आरे पर बोवाई गयी धान फसल को दंड प्रक्रिया संहिता की धारा 146 के तहत कुकर्कर सरपंच ग्राम पंचायत बागतराई की सुपुर्दगी में दिये जाने निर्देश के साथ थाना प्रभारी गुरुर को आदेश जारी किया जाता है ।

चूंकि वादग्रस्त भूमि के कब्जा के सम्बन्ध में जांच किया जाना है तथा जांच किये जाने तक उभयपक्षों के मध्य परिशांति बनाये रखने धारा 145(1) के तहत प्रारंभिक आदेश जारी किया जाता है ।

प्रकरण तर्क जवाब एवं दस्तावेजी साक्ष्य हेतु नियत की जाती है ।

मामला दिनांक

24.11/2010

सही /-

अनुविभागीय दण्डाधिकारी

बालोद

7.A careful perusal of the aforesaid order would show that firstly the order of attachment was passed by the learned Magistrate under Section 146(1) of CrPC and thereafter preliminary order under Section 145(1) of CrPC was passed by him which is in teeth of the provisions contained under Section 146(1) of CrPC.

8. Section 146(1) of CrPC states as under :-

"146. Power to attach subject of dispute and to appoint receiver. - (1) If the Magistrate at any time after making the order under subsection (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof :

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute."

9. A careful perusal of the aforesaid provision would show that an order under Section 146(1) of CrPC can be passed by learned Executive Magistrate after quashing the order under Section 145(1) of CrPC if it is a case of emergency, or if he decides that none of the parties was then in possession as referred to in Section 145 or if he is unable to satisfy himself as to which of them was then in possession of the subject of dispute.
10. In the instant case, learned Sub-divisional Magistrate, before passing the order under Section 145(1) of CrPC passed the order under Section 146(1) of CrPC attaching the property and he did not even hold that it is a case of emergency and further he did not hold that none of the parties was in possession of the subject property or that he is unable to satisfy himself as to which of them was in possession, as such, the order dated 18/11/2010 passed by the learned Magistrate is in teeth of the provisions contained under Section 146(1) of CrPC particularly when the dispute has already been settled by the Civil Court vide judgment and decree dated 29/10/1999. Therefore,

in view of the order of the Civil Court and since the Civil Court has already determined the rights of the parties with regard to the person entitled for possession of the suit property, thereafter the provision contained under Section 146 of CrPC could not have been invoked by the learned Magistrate, as such, the revisional Court has rightly set aside the order dated 18/11/2010 passed by the Sub-divisional Magistrate. I do not find any illegality or perversity in the impugned order passed by the revisional Court.

11. Accordingly, the instant petition stands dismissed. However, the petitioners are at liberty to proceed in accordance with law for protection of their rights, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet